

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 BOSTON DIVISION

4 UNITED STATES OF AMERICA .  
5 vs. . 1:04-CR-10286-PBS-ALL  
6 MICHAEL W. ALCOTT . Thursday, April 28, 2005  
7 . Courtroom 19  
8 . 1 Courthouse Way  
9 . Boston, MA. 02210

10 TRANSCRIPT OF HEARING

11  
12 BEFORE THE HONORABLE PATTI B. SARIS  
13 UNITED STATES DISTRICT JUDGE

14 A P P E A R A N C E S:

15 FOR THE GOVERNMENT:

16 United States Attorney's Office  
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Boston, MA. 02210

19 FOR THE DEFENDANT MICHAEL W. ALCOTT:

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I N D E X

Hearing - 3

\* \* \*

Thursday, April 28, 2005

[4:12 p.m.]

THE CLERK: Please be seated. Case of United States vs. Michael Alcott, Criminal Action No. 04-10286, matter now before this Court.

Would counsel and U.S. Pre-Trial Services please identify themselves for the record.

MR. PIROZZOLO: Good afternoon, your Honor. Jack Pirozzolo for the government.

MR. MUSE: Good afternoon, your Honor. Peter Muse on behalf of Mr. Alcott.

THE COURT: All right. Thank you.

I understand there --

PRETRIAL SERVICES OFFICER: Basil Cronin for Pre-Trial Services.

THE COURT: Why are we here?

MR. MUSE: If I may, your Honor, when we were last in the magistrate's session, we scheduled this matter for a Rule 11 hearing, and it was -- at that time, there had been some -- had had discussions with Mr. Alcott, and it was our plan to, in fact, enter a plea today.

There have been --

THE COURT: You need to speak up just a little

1 bit.

2 MR. MUSE: Excuse me.

3 There have been developments since that time. And  
4 last week I called Mr. Pirozzolo and just indicated that  
5 Mr. Alcott's condition had -- had worsened considerably,  
6 his medical condition, and when I schedule -- I  
7 scheduled --

8 THE COURT: Is he here right now?

9 MR. MUSE: He is.

10 THE COURT: All right.

11 What is the medical problem?

12 MR. MUSE: He is -- the Court may recall when he  
13 was before the Court last fall, he was diagnosed with  
14 prostate cancer. That condition has worsened considerably,  
15 and he has now been diagnosed with advanced stage of  
16 prostate cancer where it has spread to his pelvic bone.

17 I provided those records to Mr. Pirozzolo. I  
18 received it -- the Court will note it is dated the 21st. I  
19 received it the end of the week.

20 At this point, he has begun a schedule of  
21 treatment at Mass. General that occurs almost on a daily  
22 basis.

23 [Documents exhibited to the Court.]

24 And when he came in to see me last week, Judge, I,  
25 quite frankly, was unable to speak with him for more than

1 15 minutes. I indicated to my brother that, uh, that at  
2 this point I -- because of his condition, I couldn't even  
3 carry on a discussion regarding procedurally what would  
4 occur, with the -- what the, uh, what he -- wasn't  
5 satisfied that I would have a meaningful discussion to make  
6 sure he understood --

7 THE COURT: Well, so let me just -- I understand  
8 that he's sick and can't do it today; that's fair enough.

9 MR. MUSE: Correct.

10 THE COURT: I don't know why I just got this  
11 thirty seconds ago, but I am trying to skim it to understand  
12 what is going on; but appears there is a whole new set of  
13 charges --

14 MR. PIROZZOLO: I apologize, your Honor. This is  
15 something that I put together today, okay? And I -- and it  
16 was just -- it was really something I need -- I did put  
17 together at the last minute. I didn't even get a chance to  
18 file it electronically, your Honor. I apologize for that.

19 THE COURT: Well, actually, what you want, in  
20 other words, he's got -- he's got -- there are two things  
21 going on here. One is his physical condition has worsened;  
22 and, on the other hand, his legal position has worsened  
23 because you have this whole new set of charges.

24 MR. PIROZZOLO: That is correct, your Honor.  
25 Well, they are not charges yet, your Honor. This has to do

1 with issues that have arisen while he's on pre-trial  
2 release. This is a matter that is still under  
3 investigation.

4           However, I felt it was appropriate for me to bring  
5 this to the attention of the Court and to Pre-Trial  
6 Services at this time, because we believe -- I believe,  
7 it's essential to modify the terms of his pre-trial release  
8 status.

9           Mr. Alcott, until now, has been essentially free  
10 to move about the country as he has seen fit. He has  
11 traveled quite a bit. He's been running a business, I  
12 suppose. While he's been doing that, he was engaged in  
13 this extortionous scheme, using the Internet, using bank  
14 accounts he set up down in Atlanta, shortly after the  
15 indictment had been filed in this case, where he was taking  
16 advantage of trying to extort money from a doctor out in  
17 California.

18           We want that possibility to end, okay? And so we  
19 are sympathetic to his medical condition, okay? We haven't  
20 yet verified it, frankly.

21           THE COURT: Well, do you want to see the stuff  
22 that I have just been given?

23           MR. PIROZZOLO: I have seen the letter, your  
24 Honor, that comes from Mass. General, your Honor.

25           THE COURT: Yes.

1 MR. PIROZZOLO: But for the fact that there is  
2 this medical condition that I am taking at face value at  
3 this time, we would be seeking to revoke his status.

4 THE COURT: Well, that is what I couldn't  
5 understand. On the one hand, I get this serious allegation  
6 of a set of extortions, and, yet, on the other hand, you  
7 seem to be agreeing to keep him out.

8 What do you think about these proposed changes?

9 MR. MUSE: Your Honor, my concern at this point is  
10 Mr. Alcott's medical condition, and -- and if there is some  
11 type of an accommodation to be reached that would allow him  
12 to continue obtaining that treatment, then I would defer to  
13 the Court. And I've indicated to my brother that I, in good  
14 faith, can't come in here and say that I'm looking for a  
15 continuance on a plea because of this medical condition and  
16 his need to obtain this treatment, and then suggest that he  
17 should be -- then -- then simply disregard this matter  
18 that's been brought to my attention.

19 So I'm not objecting to --

20 THE COURT: How far along are you? Are you  
21 planning on superseding in the near future, or planning on  
22 separate indictment? What are you planning on that?

23 MR. PIROZZOLO: Probably proceed separately, your  
24 Honor, but I don't know. This is a matter, if you read the  
25 affidavit, that was being investigated in California by the

1 San Diego FBI, and they contacted us about this and provided  
2 us information --

3 THE COURT: So he might be indicted in California?

4 MR. PIROZZOLO: Could be indicted in California,  
5 your Honor. I am not sure how it's going to work out; it's  
6 still a matter currently under investigation.

7 But I think I felt, in candor, I had to bring this  
8 to the attention of the Court, your Honor. And so -- and  
9 so at this time, I believe it's entirely appropriate, at a  
10 minimum, to revoke -- to require him to stay home and only  
11 cancer treatment.

12 THE COURT: Do you have any opposition to anything  
13 they've requested?

14 MR. MUSE: Just be one or two conditions that I  
15 would ask, Judge. He -- one, that he -- if he is placed on  
16 a monitor, electronic monitor, that he be allowed to consult  
17 with me in my office.

18 THE COURT: Yes. I don't have a problem with  
19 consulting with his attorney.

20 MR. MUSE: And Mr. Alcott has requested that he be  
21 allowed to attend church services.

22 THE COURT: Sure.

23 Mr. Cronin, does this make sense given the new  
24 situation?

25 PRETRIAL SERVICES OFFICER: I think it does, your



1 Honor. I wouldn't have any other suggestions until we find  
2 out more about it, but we could accommodate that tonight if  
3 you so ordered.

4 THE COURT: Well, does he have -- I know nothing  
5 about him. I guess I don't even have a pre-trial. Do you  
6 have a pre-trial? Does he have a family?

7 MR. MUSE: He does. He's married, and has two  
8 young children and has two older children from another  
9 marriage, but currently resides with his wife and two  
10 children who are two and three years old.

11 THE COURT: Where does he work?

12 MR. MUSE: He has worked -- he has run his own  
13 businesses for the last year, has operated a, uh, a temp.  
14 service out of his home where he provides temporary  
15 employees for various businesses; and that has not been very  
16 successful, and in all likelihood he would be expecting to  
17 close that business up shortly anyway.

18 THE COURT: All right. So working is not an  
19 issue?

20 MR. MUSE: No, no.

21 MR. PIROZZOLO: I don't believe so, your Honor.

22 THE COURT: All right. So this makes sense.

23 So I'm going to impose -- I'm going to allow the  
24 motion for modification and release conditions, and the  
25 only additional conditions would be church and consulting

1 with his attorney, not for employment.

2 What do I do now? Does he still -- do you still  
3 think he might want to plead guilty, or do you want a trail  
4 date? What do you want?

5 MR. MUSE: Your Honor, I was -- frankly, Judge,  
6 this new matter certainly effects, I suppose, how this may  
7 proceed and how quickly it may proceed.

8 THE COURT: Well, does he have -- let me just -- I  
9 don't mean to be cruel -- does he have terminal cancer?

10 MR. MUSE: He does, Judge. And in the report, it  
11 suggests that the treatment he's receiving now is, uh, may  
12 provide some relief, but the prognosis is that there is  
13 zero percent likelihood of surviving more than two years.

14 [Pause-Court reads.]

15 THE COURT: Well, what do I do here? What -- it's  
16 -- in other words, it says that he has zero percent survival  
17 rate.

18 MR. PIROZZOLO: After two years, that's what the  
19 letter says, your Honor.

20 THE COURT: So I'm trying to figure this out.

21 MR. MUSE: I -- I guess what I'd like to see,  
22 Judge, if I could, is just get a handle on what -- what this  
23 treatment, what relief it may provide. It may very well be  
24 that his prognosis improves, I don't know, or that he is in  
25 a position -- we got a firmer timetable with regard to his

1 treatment.

2 My aim would be, Judge, to -- if he is to -- if he  
3 is to plead, that he be allowed to continue with whatever  
4 treatment it is that will either provide him with some  
5 opportunity to survive or --

6 THE COURT: I don't want to think about the  
7 underlying charges, but I don't know what the losses were, I  
8 don't know what the --

9 MR. PIROZZOLO: May I be heard on that, your  
10 Honor --

11 THE COURT: Yes.

12 MR. PIROZZOLO: -- just by way of background?

13 The case is a bank fraud case. There is an actual  
14 loss of \$2.5 million. It related to fraudulent loan  
15 applications that Mr. Alcott submitted to South Shore Bank.  
16 In addition, at the time he had run through the money that  
17 he had taken from South Shore Bank, he attempted to and  
18 nearly did secure an additional \$3.5 million loan from  
19 another bank when his fraud was discovered. It was  
20 basically he was submitting false financial statements to  
21 the bank.

22 By way of background a little bit, your Honor, uh  
23 --

24 THE COURT: What would you be looking -- I'll take  
25 your word for it, but there is no violence in that.

1 MR. PIROZZOLO: There is no violence in that, your  
2 Honor; but have you seen his record?

3 THE COURT: I have seen nothing. I have seen  
4 nothing. I know nothing about the case. I walked in here  
5 expecting a plea; I get a packet this thick and I hear about  
6 terminal cancer. So I'm a work in progress.

7 MR. PIROZZOLO: Mr. Alcott, I believe, spent 12  
8 years in prison for a violent crime, I believe it was armed  
9 robbery. Mr. Cronin [pre-trial services officer] I think  
10 has the record. Mr. Alcott has a very lengthy record. Mr.  
11 Alcott is, as defendants go, a very sophisticated defendant  
12 in the system.

13 [Documents exhibited to the Court.]

14 I may be wrong about the period of years. I'm  
15 working off of memory, I don't have the record in front of  
16 me, your Honor, but my memory is that he did spend time in  
17 prison.

18 THE COURT: Well, this is what I think I should  
19 do --

20 MR. PIROZZOLO: Could I be heard a little bit  
21 further, your Honor, on the matter?

22 THE COURT: Well, I just need -- tell me what the  
23 next step is. Do I schedule it for a plea? Do I schedule  
24 it for a trial? Do I indefinitely put it off?

25 MR. PIROZZOLO: If I might make a suggestion?

1 THE COURT: Yeah.

2 MR. PIROZZOLO: I don't think indefinitely putting  
3 it off is an option, okay, and the government would object  
4 to that.

5 THE COURT: All right.

6 MR. PIROZZOLO: I can give you reasons for that --

7 THE COURT: No.

8 MR. PIROZZOLO: -- but I believe that is  
9 inappropriate at this time.

10 I don't know, but given the evidence against Mr.  
11 Alcott, based on my discussions with Mr. Muse, I'm not sure  
12 that this is a triable case from his perspective, okay?  
13 And I've been hearing for months that this is simply going  
14 to be a plea, okay?

15 One way to approach this, your Honor, is to have  
16 the plea but then work out an accommodation schedule so he  
17 can go through the treatment, which I understand may be a  
18 period of four months or so that is being proposed by his  
19 doctors. And we could either extend the pre -- the, uh,  
20 the PSR process so that the actual sentencing comes after  
21 he's gone through the treatment, or we go through the  
22 process and then there may be a possibility of delaying a  
23 report date until after he's gone through the, uh, gone  
24 through the process that's been prescribed by his doctors.

25 THE COURT: Delaying a report date means he's

1 going to be dead. I mean, I'm just -- and I don't want to  
2 send someone to jail for the last six months of his life.

3 Let me do this. You don't know the medical  
4 situation yet; you haven't talked to the doctor; right?

5 MR. MUSE: Uh --

6 THE COURT: I need to resolve -- I need to get to  
7 the point --

8 MR. MUSE: And I don't think we are there, Judge.  
9 In talking to his doctor last week, I think he's -- he's  
10 done this treatment. Some of it is of an experimental  
11 nature, and it may not be for another, say, few weeks or  
12 month before we --

13 THE COURT: Why don't I set up a plea date.

14 MR. MUSE: Okay.

15 THE COURT: And instead of having this all popped  
16 on me at the last minute both of you do research about  
17 realistically is he competent and capable of entering a  
18 plea. If he can, I'd want to do it, and then I'll deal with  
19 the sentencing ramifications later on.

20 MR. MUSE: It was only popped on you at the last  
21 minute because it was popped on us at the last minute.

22 THE COURT: I understand, but I have two sets of  
23 new phenomenon here, and I'm trying to balance them in my  
24 mind, which is, on the one hand, if all this new stuff  
25 hadn't came up, I would be feeling very, you know, "Oh,

1 well, this is just a bank fraud; take your time," but now I  
2 have this extortion scheme. So I'm glad you brought that to  
3 my attention; that's pretty serious on the scheme of things.

4 And so why don't we do this. Why don't I see you  
5 in three weeks, does that make sense, either with or  
6 without him, depending on what his situation is. We'll  
7 either do the plea then, or I'll have an affidavit with  
8 some documentation about when he can do the plea.

9 MR. MUSE: Fine. What I will do is I'll be in  
10 contact with Mr. Pirozzolo and the Court and try and provide  
11 that information in advance of that day, Judge.

12 THE COURT: Now, is this all to be filed under  
13 seal? Obviously, his medical condition should be filed  
14 under seal.

15 And what about your thing?

16 MR. PIROZZOLO: Well, I'd be happy to have it  
17 filed under seal, your Honor.

18 THE COURT: It's an ongoing investigation, that's  
19 the problem.

20 MR. PIROZZOLO: It is, your Honor, but I guess  
21 I'll leave it to your discretion. I would ask that it be  
22 filed under seal but I didn't file it under sale. So... .

23 THE COURT: Don't forget, once this stuff goes on  
24 the World-Wide Web you can't take it back. Why don't I do  
25 this. Why don't --

1 MR. PIROZZOLO: I did not file it electronically,  
2 your Honor. I did not file it electronically.

3 THE COURT: But it will be scanned.

4 MR. PIROZZOLO: Okay.

5 THE COURT: So why don't I put them all under  
6 seal.

7 MR. PIROZZOLO: Okay. Should I --

8 THE COURT: At this point it's an ongoing  
9 investigation, and to boot, this is a very confidential and  
10 private matter having to do with his medical condition.

11 MR. PIROZZOLO: Should I file a motion, your  
12 Honor, or enter an order on the record.

13 THE COURT: I'm sealing it.

14 MR. PIROZZOLO: You're sealing it.

15 THE COURT REPORTER: Your Honor, does that include  
16 the transcript, as well?

17 THE COURT: The transcript, yes. Yes.

18 MR. PIROZZOLO: Thank you, your Honor.

19 THE COURT: Now, let's pick a date, in which case  
20 you're going to -- I'll either do the plea on that day, it  
21 will marked as a Rule 11 hearing, or motion for continuance  
22 to a realistic date, or I'm just going to need a status to  
23 figure out what to do. In other words, given the extortion  
24 scheme, I'm not sure I'm willing to put it off for real  
25 long.



1 MR. MUSE: That's fine. And I'll do my best to  
2 obtain whatever medical information will assist the Court.

3 THE CLERK: May 18th at 4:00 p.m.?

4 MR. MUSE: Could we go the 19th, Mr. Alba?

5 THE CLERK: Well --

6 MR. MUSE: Twenty-fourth?

7 THE CLERK: A lot of stuff on. Twenty-fourth at  
8 --

9 THE COURT: It will only take a half an hour.

10 THE CLERK: All right. 4:00 on the 24th.

11 MR. PIROZZOLO: That's fine, your Honor.

12 THE COURT: Let me ask you this: Are there any  
13 assets?

14 MR. MUSE: No.

15 THE COURT: Are you court appointed?

16 MR. MUSE: No. I was privately retained, Judge.

17 THE COURT: Retained?

18 I'm just playing this out in my mind, given the  
19 financial losses to the bank and the extortion, was there  
20 any money paid out on the alleged extortion scheme?

21 MR. PIROZZOLO: Not that we know of, your Honor.

22 THE COURT: So there is no money there.

23 I'm just trying to think through if he pleads  
24 guilty what a possible sentence would be in these  
25 situations, and the one thing I want to do is make sure

1 none of the ill-gotten gains disappeared.

2 MR. MUSE: No. I think my understanding is that  
3 there was also a civil suit.

4 THE COURT: Restitution has happened?

5 MR. MUSE: I can get more details, but my  
6 understanding is that there has been restitution made.

7 THE COURT: Is that right? Are the banks out of  
8 pocket?

9 MR. PIROZZOLO: The banks are out of packet a  
10 substantial amount of money, your Honor, yes.

11 MR. MUSE: Whatever he had, I think has been given  
12 up already, Judge, is what I meant to say.

13 MR. PIROZZOLO: Whatever he had, there was some  
14 security interest in some of the property, and I believe  
15 that that was turned over as part of the civil proceeding,  
16 but it was well short of the amount of loss, about  
17 \$2 million short.

18 THE COURT: Well, this is going to be messy,  
19 because there is a widow and two babies. I don't know if  
20 there is substitute -- I notice you were seeking forfeiture.  
21 I would just suggest talking about all these things.

22 MR. PIROZZOLO: Sure. Okay, your Honor.

23 I do appreciate Mr. Alcott's personal situation,  
24 and I want you to know that we've tried make a number of  
25 accommodations. We have known and Mr. Alcott's cancer has

1       been a feature of the way we've been proceeding in the case  
2       from the beginning from at least a year ago when we were  
3       initially negotiating a plea agreement with his prior  
4       counsel, not Mr. Muse. There was information that was  
5       filed and then --

6               THE COURT: No, no. I am not faulting you at all.  
7       I'm just simply saying I've actually never had this come up  
8       unless, hopefully, the doctor is wrong, but if the doctor is  
9       right there is an end story here, and -- and, plus, you have  
10      a wife and two children.

11             MR. PIROZZOLO: It's a very unfortunate situation,  
12      your Honor.

13             THE COURT: And a huge monetary loss, plus an  
14      extortion scheme. It's sort of -- I can't quite see the end  
15      game right now with what happens.

16             MR. PIROZZOLO: Well, you know, when he goes home  
17      and kisses those two kids good night at the same time he's  
18      doing the extortion scheme, your Honor, that's something to  
19      take into consideration, your Honor.

20             THE COURT: I hear you. I hear you. I hear you.  
21      I understand that.

22             All right. I'll think about it; you'll think  
23      about it.

24             MR. MUSE: Yes, your Honor.

25             THE COURT: But we need to move it to second base,

1 and figure out if there is a plea or a trial, and if he's  
2 competent after all this cancer therapy.

3 MR. MUSE: No. And my brother's been patient, and  
4 I indicated that perhaps we would leave it on today and seek  
5 some guidance from the Court.

6 THE COURT: And let me say to you, Mr. Alcott, I  
7 have genuine sympathy for your medical condition, but when I  
8 read this extortion scheme, truthfully, if you weren't sick,  
9 I would be revoking your bail. So but there is an express  
10 order not to be in touch with any of these people, but in  
11 general I'm also saying you cannot commit any more crimes  
12 regardless of the medical condition. It's not -- it's not a  
13 safe harbor. All right. Thank you.

14 MR. PIROZZOLO: Thank you, your Honor.

15 THE CLERK: Court is in recess.

16 [Recess at 4:34 p.m.]

17 \* \* \*

18 I certify that the foregoing is a correct  
19 transcript from the record of proceedings in the  
20 above-entitled matter.

21

22 Date: June 20, 2005

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Signature of Court Reporter